

AMENDED IN ASSEMBLY APRIL 27, 2005

AMENDED IN ASSEMBLY APRIL 5, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1433

Introduced by Assembly Member Emmerson

February 22, 2005

An act to amend Section 5922 of the Government Code, relating to public finance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1433, as amended, Emmerson. Public finance contracts.

Existing law generally sets forth the authority and duties of state and local government in entering into contracts related to the issuance or carrying of bonds or the acquisition or carrying of an investment or program of investment.

This bill would additionally specify that failure to comply with any law, ordinance, rule, regulation, guideline, or other requirement of ~~the~~ *any* state or ~~of any~~ local government, pertaining to specified aspects of a project financed in whole or in part with bonds, shall not impair the validity or enforceability of the bonds.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 5922 of the Government Code is
- 2 amended to read:
- 3 5922. Notwithstanding any other provision of law, all of the
- 4 following apply:

(a) (1) In connection with, or incidental to, the issuance or carrying of bonds, or acquisition or carrying of any investment or program of investment, any state or local government may enter into any contracts that the state or local government determines to be necessary or appropriate to place the obligation or investment of the state or local government, as represented by the bonds, investment or program of investment and the contract or contracts, in whole or in part, on the interest rate, currency, cashflow, or other basis desired by the state or local government, including, but not limited to, contracts commonly known as interest rate swap agreements, currency swap agreements, forward payment conversion agreements, futures, or contracts providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, or contracts to exchange cashflows or a series of payments, or contracts, including, but not limited to, interest rate floors or caps, options, puts or calls to hedge payment, currency, rate, spread, or similar exposure. These contracts or arrangements may also be entered into by state or local governments in connection with, or incidental to, entering into or maintaining any agreement that secures bonds, including bonds issued by private entities. These contracts and arrangements shall be entered into with the parties, selected by the means, and contain the payment, security, default, remedy, and other terms and conditions, determined by the state or local government, after giving due consideration for the creditworthiness of the counterparties, where applicable, including any rating by a nationally recognized rating agency or any other criteria as may be appropriate.

(2) No local government shall enter into any of the contracts or arrangements pursuant to this subdivision, unless its governing body first determines that the contract or arrangement or program of contracts is designed to reduce the amount or duration of payment, currency, rate, spread, or similar risk or result in a lower cost of borrowing when used in combination with the issuance of bonds or enhance the relationship between risk and return with respect to the investment or program of investment in connection with, or incident to, the contract or arrangement that is to be entered into.

(b) Bonds issued by a state or local government may be payable in accordance with their terms, in whole or in part, in

1 currency other than lawful money of the United States, provided
 2 that the state or local government enter into a currency swap or
 3 similar agreement for payments in lawful money of the United
 4 States, which covers the entire amount of the debt service
 5 payment obligation of the state or local government with respect
 6 to the bonds payable in other currency, and provided further that
 7 if the term of that agreement is less than the term of the bonds,
 8 the state or local government shall covenant to enter into
 9 additional agreements as necessary to cover the entire amount of
 10 the debt service payment obligation. An issuer shall include in its
 11 written notice to the California Debt and Investment Advisory
 12 Commission pursuant to subdivision (g) of Section 8855 a
 13 statement of its intent to issue bonds payable in a currency other
 14 than lawful money of the United States.

15 (c) In connection with, or incidental to, the issuance or
 16 carrying of bonds, or entering into any of the contracts or
 17 arrangements referred to in subdivision (a), the state or local
 18 government may enter into credit enhancement or liquidity
 19 agreements, with payment, interest rate, currency, security,
 20 default, remedy, and other terms and conditions as the state or
 21 local government determines.

22 (d) Proceeds of bonds and any moneys set aside and pledged
 23 to secure payment of the bonds or any of the contracts entered
 24 into pursuant to this section, may be invested in securities or
 25 obligations described in the ordinance, resolution, indenture,
 26 agreement, or other instrument providing for the issuance of the
 27 bonds or the contract and may be pledged to and used to service
 28 any of the contracts or agreements entered into pursuant to this
 29 section.

30 (e) Failure to comply with any law, ordinance, rule, regulation,
 31 guideline, or other requirement of ~~the state or of any~~ *any state or*
 32 local government, pertaining to the approval, authorization,
 33 design, acquisition, or construction of a project financed in whole
 34 or in part with bonds, shall not impair the validity or
 35 enforceability of the bonds. However, nothing in this subdivision
 36 shall exempt the project from any requirement of law or any
 37 ordinance, rule, regulation, guideline, or other requirement
 38 otherwise applicable to the project to the same extent as if the
 39 project was financed other than with bonds. *Unless a state or*
 40 *local government makes a finding that its approval of an issue of*

- 1 *bonds is also an approval of the financed project, no approval of*
- 2 *an issue of bonds by a state or local government shall constitute*
- 3 *an approval for a project for purposes of Division 13*
- 4 *(commencing with Section 21000) of the Public Resources Code.*